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U.S. BANKRUPTCY COURT  
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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL**

**OF THE NINTH CIRCUIT**

In re:	)	BAP No.	NV-14-1098
	)		
HORIZON RIDGE MEDICAL &	)	Bk. No.	2:12-bk-13906-BTB
CORPORATE CENTER, LLC,	)		
	)		
Debtor.	)		
_____	)		
	)		
HORIZON RIDGE MEDICAL &	)		
CORPORATE CENTER, LLC,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>ORDER DENYING</b>	
	)	<b>STAY PENDING APPEAL</b>	
BANK OF AMERICA, N.A.,	)		
	)		
Appellee.	)		
_____	)		

Before: TAYLOR and DUNN, Bankruptcy Judges.

The Panel received and considered appellant's emergency motion for stay pending appeal. This is an appeal from an order approving sale procedures for sale of debtor appellant's major asset, pursuant to the confirmed liquidating Chapter 11 Plan (also on appeal).

The Panel considers four factors in determining a motion for stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2)

whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken v. Holder, 556 U.S. 418, 434 (2009).

'A stay is not a matter of right, even if irreparable injury might otherwise result.' Virginian R. Co., 272 U.S., at 672, 47 S. Ct. 222. It is instead 'an exercise of judicial discretion,' and '[t]he propriety of its issue is dependent upon the circumstances of the particular case.' Id., at 672-673, 47 S. Ct. 222; see Hilton, supra, at 777, 107 S. Ct. 2113 ('[T]he traditional stay factors contemplate individualized judgments in each case'). The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.

Nken v. Holder, 556 U.S. at 433-34.

The standard of review on the merits for the bankruptcy court's fact findings is clear error. Fed. R. Bankr. P. 8013. That is a substantial hurdle on appeal. The Panel concludes that appellant has not established that it is entitled to a stay pending appeal. In particular, appellant has not established a sufficient likelihood of success on the merits to warrant a stay.

Therefore, the motion for stay pending appeal is ORDERED DENIED.